

1 SQUIRE, SANDERS & DEMPSEY L.L.P.
2 Mark C. Goodman (State Bar # 154692)
3 mgoodman@ssd.com
4 Ethan A. Miller (State Bar # 155965)
5 camiller@ssd.com
6 One Maritime Plaza, Suite 300
San Francisco, CA 94111-3492
Telephone: +1.415.954.0200
Facsimile: +1.415.393.9887

7 Attorneys for Defendant
8 PETCO ANIMAL SUPPLIES, INC.

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 LOIS GRADY, KAYE STEINSAPIR,
13 BARBARA GONZALES, FRANK
14 BODEMAN, and CRAIG ANDERSON
individually and on behalf of all others
similarly situated,

15 Plaintiffs,

16 vs.

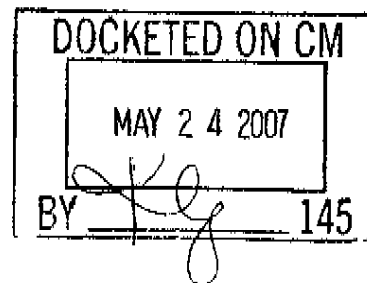
17 MENU FOODS INCOME FUND, MENU
18 FOODS, INC., MENU FOODS LIMITED,
19 MENU FOODS OPERATING LIMITED
20 PARTNERSHIP, MENU FOODS
21 MIDWEST CORP., CHEM NUTRA INC.,
22 PETCO ANIMAL SUPPLIES, INC.,
23 NUTRO PRODUCTS, INC. and DOES 1
through 10, inclusive,

24 Defendants.

Case No. CV 07-02253-DDP (PLAx)

Judge: The Honorable George H. King

**ANSWER OF PETCO ANIMAL
SUPPLIES, INC.**



25 Defendant PETCO Animal Supplies, Inc., ("PETCO") hereby answers the First Amended
26 Complaint ("Complaint") filed by Lois Grady, Kaye Steinsapir, Barbara Gonzalez, Frank
27 Bodeman, and Craig Anderson as follows:

28
ANSWER OF PETCO ANIMAL SUPPLIES, INC. – CASE NO. CV 07-02253-DDP (PLAx)

RESPONSE TO "INTRODUCTION"

1
2 1. The allegations contained in paragraph 1 of the Complaint are not directed toward
3 PETCO and, therefore, no response is required. If a response is required, PETCO denies each
4 and every allegation contained in paragraph 1 of the Complaint except that PETCO admits that
5 Plaintiffs purport to bring an action and purport to represent a purported class. PETCO denies
6 there is any legal or factual basis for the relief sought or for class certification.

7 2. The allegations contained in paragraph 2 of the Complaint are not directed toward
8 PETCO and, therefore, no response is required. If a response is required, PETCO denies each
9 and every allegation contained in paragraph 2 of the Complaint. PETCO lacks knowledge or
10 information sufficient to form a belief as to the truth or falsity of the allegations directed toward
11 the other defendants.

RESPONSE TO "NATURE OF THE ACTION"

12
13 3. The allegations contained in paragraph 3 of the Complaint are not directed toward
14 PETCO and, therefore, no response is required. If a response is required, PETCO denies each
15 and every allegation contained in paragraph 3 of the Complaint except that PETCO admits that
16 Plaintiffs purport to bring an action and purport to represent a purported class. PETCO denies
17 that there is any legal or factual basis for the relief sought or for class certification.

RESPONSE TO "JURISDICTION AND VENUE"

18
19 4. The allegations contained in the first sentence of paragraph 4 of the Complaint are
20 not directed toward PETCO and, therefore, no response is required. The allegations contained in
21 the second sentence of paragraph 4 of the Complaint are legal conclusions to which no response
22 is required. If a response is required, PETCO denies each and every allegation contained in the
23 second sentence of paragraph 4 of the Complaint except that PETCO admits that there is diversity
24 of citizenship between Plaintiffs and the defendants and that Plaintiffs purport to represent a
25 purported class and that Plaintiffs request certain relief. PETCO denies that there is any legal or
26 factual basis for the relief sought or for class certification.

27 5. The allegations contained in paragraph 5 of the Complaint are legal conclusions to
28 which no response is required. If a response is required, PETCO denies each and every allegation

1 contained in paragraph 5 of the Complaint except that PETCO admits that it is authorized to do
2 business in the State of California. PETCO lacks knowledge or information sufficient to form a
3 belief as to the truth or falsity of the allegations contained in paragraph 5 of the Complaint
4 directed toward the other defendants.

5 6. The allegations contained in paragraph 6 of the Complaint are legal conclusions to
6 which no response is required. If a response is required, PETCO denies each and every allegation
7 contained in paragraph 6 of the Complaint except that PETCO admits that it is a Delaware
8 Corporation with its principal place of business in California. PETCO lacks knowledge or
9 information sufficient to form a belief as to the truth or falsity of the allegations contained in
10 paragraph 6 of the Complaint directed toward the other defendants.

11 **RESPONSE TO "PLAINTIFFS"**

12 7. The allegations contained in paragraph 7 of the Complaint are not directed toward
13 PETCO and, therefore, no response is required. If a response is required, PETCO denies each
14 and every allegation contained in paragraph 7 of the Complaint because PETCO does not have
15 sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
16 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
17 directed toward the other defendants.

18 8. The allegations contained in paragraph 8 of the Complaint are not directed toward
19 PETCO and, therefore, no response is required. If a response is required, PETCO denies each
20 and every allegation contained in paragraph 8 of the Complaint because PETCO does not have
21 sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
22 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
23 directed toward the other defendants.

24 9. The allegations contained in paragraph 9 of the Complaint are not directed toward
25 PETCO and, therefore, no response is required. If a response is required, PETCO denies each
26 and every allegation contained in paragraph 9 of the Complaint because PETCO does not have
27 sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
28

1 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
2 directed toward the other defendants.

3 10. The allegations contained in paragraph 10 of the Complaint are not directed
4 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
5 each and every allegation contained in paragraph 10 of the Complaint because PETCO does not
6 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
7 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
8 directed toward the other defendants.

9 11. The allegations contained in paragraph 11 of the Complaint are not directed
10 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
11 each and every allegation contained in paragraph 11 of the Complaint because PETCO does not
12 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
13 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
14 directed toward the other defendants.

15 **RESPONSE TO "DEFENDANTS"**

16 12. PETCO denies each and every allegation contained in paragraph 12 of the
17 Complaint directed toward PETCO except that PETCO admits that it is authorized to do business
18 in the State of California. PETCO lacks knowledge or information sufficient to form a belief as
19 to the truth or falsity of the allegations contained in paragraph 12 of the Complaint directed
20 toward the other defendants.

21 13. The allegations contained in paragraph 13 of the Complaint are not directed
22 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
23 each and every allegation contained in paragraph 13 of the Complaint because PETCO does not
24 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
25 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
26 directed toward the other defendants.

1 14. PETCO denies each and every allegation contained in paragraph 14 of the
2 Complaint except that PETCO admits that it is a Delaware Corporation with its principal place of
3 business in California. PETCO further admits that it sold and marketed various pet foods.

4 15. The allegations contained in paragraph 15 of the Complaint are not directed
5 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
6 each and every allegation contained in paragraph 15 of the Complaint because PETCO does not
7 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
8 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
9 directed toward the other defendants.

10 16. The allegations contained in paragraph 16 of the Complaint are not directed
11 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
12 each and every allegation contained in paragraph 16 of the Complaint because PETCO does not
13 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
14 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
15 directed toward the other defendants.

16 17. The allegations contained in paragraph 17 of the Complaint are not directed
17 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
18 each and every allegation contained in paragraph 17 of the Complaint because PETCO does not
19 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
20 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
21 directed toward the other defendants.

22 18. PETCO denies each and every allegation contained in paragraph 18 of the
23 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
24 belief as to the truth or falsity of the allegations contained in paragraph 18 of the Complaint
25 directed toward the other defendants.

26 **RESPONSE TO "CLASS ACTION ALLEGATIONS"**

27 19. The allegations contained in paragraph 19 of the Complaint are legal conclusions
28 to which no response is required. If a response is required, PETCO denies each and every

1 allegation contained in paragraph 19 of the Complaint except that PETCO admits that Plaintiffs
2 purport to represent a purported class. PETCO denies that there is any legal or factual basis for
3 class certification.

4 20. The allegations contained in paragraph 20 of the Complaint are legal conclusions
5 to which no response is required. If a response is required, PETCO denies each and every
6 allegation contained in paragraph 20 of the Complaint except that PETCO admits that Plaintiffs
7 purport to represent a purported class. PETCO denies that there is any legal or factual basis for
8 class certification.

9 21. PETCO denies each and every allegation contained in paragraph 21 of the
10 Complaint, including subparts A. – L., directed toward PETCO. PETCO lacks knowledge or
11 information sufficient to form a belief as to the truth or falsity of the allegations contained in
12 paragraph 21 of the Complaint, including subparts A. – L., directed toward the other defendants.

13 22. PETCO denies each and every allegation contained in paragraph 22 of the
14 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
15 belief as to the truth or falsity of the allegations contained in paragraph 22 of the Complaint
16 directed toward the other defendants.

17 23. PETCO denies each and every allegation contained in paragraph 23 of the
18 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
19 belief as to the truth or falsity of the allegations contained in paragraph 23 of the Complaint
20 directed toward the other defendants.

21 24. PETCO denies each and every allegation contained in paragraph 24 of the
22 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
23 belief as to the truth or falsity of the allegations contained in paragraph 24 of the Complaint
24 directed toward the other defendants.

25 **RESPONSE TO "FACTS COMMON TO ALL COUNTS"**

26 25. PETCO denies each and every allegation contained in paragraph 25 of the
27 Complaint directed toward PETCO except that PETCO admits that that it sold and marketed
28 various pet foods. PETCO lacks knowledge or information sufficient to form a belief as to the

1 truth or falsity of the allegations contained in paragraph 25 of the Complaint directed toward the
2 other defendants.

3 26. The allegations contained in paragraph 26 of the Complaint are not directed
4 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
5 each and every allegation contained in paragraph 26 of the Complaint. PETCO lacks knowledge
6 or information sufficient to form a belief as to the truth or falsity of the allegations directed
7 toward the other defendants.

8 27. The allegations contained in paragraph 27 of the Complaint are not directed
9 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
10 each and every allegation contained in paragraph 27 of the Complaint because PETCO does not
11 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
12 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
13 directed toward the other defendants.

14 28. The allegations contained in paragraph 28 of the Complaint are not directed
15 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
16 each and every allegation contained in paragraph 28 of the Complaint because PETCO does not
17 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
18 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
19 directed toward the other defendants.

20 29. The allegations contained in paragraph 29 of the Complaint are not directed
21 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
22 each and every allegation contained in paragraph 29 of the Complaint because PETCO does not
23 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
24 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
25 directed toward the other defendants.

26 30. The allegations contained in paragraph 30 of the Complaint are not directed
27 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
28 each and every allegation contained in paragraph 30 of the Complaint because PETCO does not

1 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
2 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
3 directed toward the other defendants.

4 31. The allegations contained in paragraph 31 of the Complaint are not directed
5 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
6 each and every allegation contained in paragraph 31 of the Complaint because PETCO does not
7 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
8 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
9 directed toward the other defendants.

10 32. The allegations contained in paragraph 32 of the Complaint are not directed
11 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
12 each and every allegation contained in paragraph 32 of the Complaint. PETCO lacks knowledge
13 or information sufficient to form a belief as to the truth or falsity of the allegations directed
14 toward the other defendants.

15 33. The allegations contained in paragraph 33 of the Complaint are not directed
16 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
17 each and every allegation contained in paragraph 33 of the Complaint because PETCO does not
18 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
19 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
20 directed toward the other defendants.

21 34. The allegations contained in paragraph 34 of the Complaint are not directed
22 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
23 each and every allegation contained in paragraph 34 of the Complaint because PETCO does not
24 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
25 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
26 directed toward the other defendants.

27 35. The allegations contained in paragraph 35 of the Complaint are not directed
28 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies

1 each and every allegation contained in paragraph 35 of the Complaint because PETCO does not
2 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
3 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
4 directed toward the other defendants.

5 36. The allegations contained in paragraph 36 of the Complaint are not directed
6 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
7 each and every allegation contained in paragraph 36 of the Complaint because PETCO does not
8 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
9 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
10 directed toward the other defendants.

11 37. The allegations contained in paragraph 37 of the Complaint are not directed
12 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
13 each and every allegation contained in paragraph 37 of the Complaint because PETCO does not
14 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
15 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
16 directed toward the other defendants.

17 38. The allegations contained in paragraph 38 of the Complaint are not directed
18 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
19 each and every allegation contained in paragraph 38 of the Complaint because PETCO does not
20 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
21 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
22 directed toward the other defendants.

23 39. PETCO denies each and every allegation contained in paragraph 39 of the
24 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
25 belief as to the truth or falsity of the allegations contained in paragraph 39 of the Complaint
26 directed toward the other defendants.

27 40. PETCO denies each and every allegation contained in paragraph 40 of the
28 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a

1 belief as to the truth or falsity of the allegations contained in paragraph 40 of the Complaint
2 directed toward the other defendants.

3 41. PETCO denies each and every allegation contained in paragraph 41 of the
4 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
5 belief as to the truth or falsity of the allegations contained in paragraph 41 of the Complaint
6 directed toward the other defendants.

7 42. PETCO denies each and every allegation contained in paragraph 42 of the
8 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
9 belief as to the truth or falsity of the allegations contained in paragraph 42 of the Complaint
10 directed toward the other defendants.

11 43. PETCO denies each and every allegation contained in paragraph 43 of the
12 Complaint directed toward PETCO except that PETCO admits that that it sold and marketed
13 various pet foods and that it is authorized to do business in the State of California. PETCO lacks
14 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
15 contained in paragraph 43 of the Complaint directed toward the other defendants.

16 44. PETCO denies each and every allegation contained in paragraph 44 of the
17 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
18 belief as to the truth or falsity of the allegations contained in paragraph 44 of the Complaint
19 directed toward the other defendants.

20 45. PETCO denies each and every allegation contained in paragraph 45 of the
21 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
22 belief as to the truth or falsity of the allegations contained in paragraph 45 of the Complaint
23 directed toward the other defendants.

24 46. The allegations contained in paragraph 46 of the Complaint are not directed
25 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
26 each and every allegation contained in paragraph 46 of the Complaint because PETCO does not
27 have sufficient information to form a belief as to the allegations in that paragraph. PETCO lacks
28

1 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
2 directed toward the other defendants.

3 47. PETCO denies each and every allegation contained in paragraph 47 of the
4 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
5 belief as to the truth or falsity of the allegations contained in paragraph 47 of the Complaint
6 directed toward the other defendants.

7 48. PETCO denies each and every allegation contained in paragraph 48 of the
8 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
9 belief as to the truth or falsity of the allegations contained in paragraph 48 of the Complaint
10 directed toward the other defendants.

11 **RESPONSE TO "FIRST CAUSE OF ACTION**

12 **STRICT PRODUCT LIABILITY**

13 **(AGAINST ALL DEFENDANTS)"**

14
15 49. With respect to the allegation contained in paragraph 49 of the Complaint, PETCO
16 repeats and realleges each and every admission, denial, averment, and statement in paragraphs 1
17 through 48 of this Answer with the same force and effect as though set forth here in full.

18 50. PETCO denies each and every allegation contained in paragraph 50 of the
19 Complaint directed toward PETCO except that PETCO admits that that it sold and marketed
20 various pet foods and that it is authorized to do business in the State of California. PETCO lacks
21 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations
22 contained in paragraph 50 of the Complaint directed toward the other defendants.

23 51. PETCO denies each and every allegation contained in paragraph 51 of the
24 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
25 belief as to the truth or falsity of the allegations contained in paragraph 51 of the Complaint
26 directed toward the other defendants.

27 52. PETCO denies each and every allegation contained in paragraph 52 of the
28 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a

1 belief as to the truth or falsity of the allegations contained in paragraph 52 of the Complaint
2 directed toward the other defendants.

3 53. PETCO denies each and every allegation contained in paragraph 53 of the
4 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
5 belief as to the truth or falsity of the allegations contained in paragraph 53 of the Complaint
6 directed toward the other defendants. PETCO further denies that Plaintiffs or any other similarly
7 situated parties have been damaged in any amount whatsoever or at all.

8 54. PETCO denies each and every allegation contained in paragraph 54 of the
9 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
10 belief as to the truth or falsity of the allegations contained in paragraph 54 of the Complaint
11 directed toward the other defendants.

12 **RESPONSE TO "SECOND CAUSE OF ACTION**

13 **NEGLIGENCE**

14 **(AGAINST ALL DEFENDANTS)"**

15
16 55. With respect to the allegation contained in paragraph 55 of the Complaint, PETCO
17 repeats and realleges each and every admission, denial, averment, and statement in paragraphs 1
18 through 54 of this Answer with the same force and effect as though set forth here in full.

19 55. The allegations contained in the first sentence of paragraph 55¹ of the Complaint
20 are legal conclusions to which no response is required. If a response is required, PETCO denies
21 each and every allegation contained in the first sentence of paragraph 55 of the Complaint.
22 PETCO denies each and every allegation contained in the second sentence of paragraph 55 of the
23 Complaint. PETCO lacks knowledge or information sufficient to form a belief as to the truth or
24 falsity of the allegations contained in paragraph 55 of the Complaint directed toward the other
25 defendants.

26
27
28 ¹ Plaintiffs' Complaint includes two paragraphs numbered as "55".

56. PETCO denies each and every allegation contained in paragraph 56 of the Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 56 of the Complaint directed toward the other defendants. PETCO further denies that Plaintiffs or any other similarly situated parties have been damaged in any amount whatsoever or at all.

57. PETCO denies each and every allegation contained in paragraph 57 of the Complaint directed toward PETCO except that PETCO admits that that it sold and marketed various pet foods. PETCO lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 57 of the Complaint directed toward the other defendants. PETCO further denies that Plaintiffs or any other similarly situated parties have been damaged in any amount whatsoever or at all.

58. PETCO denies each and every allegation contained in paragraph 58 of the Complaint directed toward PETCO except that PETCO admits that Plaintiffs purport to seek certain damages. PETCO denies that there is any legal or factual basis for the relief sought. PETCO lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 58 of the Complaint directed toward the other defendants. PETCO further denies that Plaintiffs or any other similarly situated parties have been damaged in any amount whatsoever or at all.

RESPONSE TO "THIRD CAUSE OF ACTION

BREACH OF WARRANTIES

(AGAINST ALL DEFENDANTS)"

59. With respect to the allegation contained in paragraph 59 of the Complaint, PETCO repeats and realleges each and every admission, denial, averment, and statement in paragraphs 1 through 58 of this Answer with the same force and effect as though set forth here in full.

60. The allegations contained in paragraph 60 of the Complaint are legal conclusions to which no response is required. If a response is required, PETCO denies each and every allegation contained in paragraph 60 of the Complaint except that PETCO admits that it sold and

1 marketed various pet foods. PETCO lacks knowledge or information sufficient to form a belief
 2 as to the truth or falsity of the allegations contained in paragraph 60 of the Complaint directed
 3 toward the other defendants.

4 61. The allegations contained in paragraph 61 of the Complaint are not directed
 5 toward PETCO and, therefore, no response is required. If a response is required, PETCO denies
 6 each and every allegation contained in paragraph 61 of the Complaint. PETCO lacks knowledge
 7 or information sufficient to form a belief as to the truth or falsity of the allegations directed
 8 toward the other defendants.

9 62. PETCO denies each and every allegation contained in paragraph 62 of the
 10 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
 11 belief as to the truth or falsity of the allegations contained in paragraph 62 of the Complaint
 12 directed toward the other defendants. PETCO further denies that Plaintiffs or any other similarly
 13 situated parties have been damaged in any amount whatsoever or at all.

14 **RESPONSE TO "FOURTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION AND BUSINESS PRACTICES**

16 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE**

17 **SECTION 17200, ET SEQ.**

18 **(AGAINST ALL DEFENDANTS)"**

19
 20 63. With respect to the allegation contained in paragraph 63 of the Complaint, PETCO
 21 repeats and realleges each and every admission, denial, averment, and statement in paragraphs 1
 22 through 62 of this Answer with the same force and effect as though set forth here in full.

23 64. The allegations contained in paragraph 64 of the Complaint are legal conclusions
 24 to which no response is required. If a response is required, PETCO denies each and every
 25 allegation contained in paragraph 64 of the Complaint except that PETCO admits that it sold and
 26 marketed various pet foods. PETCO lacks knowledge or information sufficient to form a belief
 27 as to the truth or falsity of the allegations contained in paragraph 64 of the Complaint directed
 28 toward the other defendants.

1 65. The allegations contained in paragraph 65 of the Complaint are legal conclusions
2 to which no response is required. If a response is required, PETCO denies each and every
3 allegation contained in paragraph 65 of the Complaint. PETCO lacks knowledge or information
4 sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 65 of
5 the Complaint directed toward the other defendants.

6 66. PETCO denies each and every allegation contained in paragraph 66 of the
7 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
8 belief as to the truth or falsity of the allegations contained in paragraph 66 of the Complaint
9 directed toward the other defendants.

10 67. PETCO denies each and every allegation contained in paragraph 67 of the
11 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
12 belief as to the truth or falsity of the allegations contained in paragraph 67 of the Complaint
13 directed toward the other defendants.

14 **RESPONSE TO "FIFTH CAUSE OF ACTION**

15 **FALSE ADVERTISING**

16 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE**

17 **SECTION 17500, ET SEQ.**

18 **(AGAINST ALL DEFENDANTS)"**

19
20 68. With respect to the allegation contained in paragraph 68 of the Complaint, PETCO
21 repeats and realleges each and every admission, denial, averment, and statement in paragraphs 1
22 through 67 of this Answer with the same force and effect as though set forth here in full.

23 69. The allegations contained in paragraph 69 of the Complaint are legal conclusions
24 to which no response is required. If a response is required, PETCO denies each and every
25 allegation contained in paragraph 69 of the Complaint. PETCO lacks knowledge or information
26 sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 69 of
27 the Complaint directed toward the other defendants.

28

1 70. PETCO denies each and every allegation contained in paragraph 70 of the
2 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
3 belief as to the truth or falsity of the allegations contained in paragraph 70 of the Complaint
4 directed toward the other defendants.

5 71. PETCO denies each and every allegation contained in paragraph 71 of the
6 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
7 belief as to the truth or falsity of the allegations contained in paragraph 71 of the Complaint
8 directed toward the other defendants.

9
10 **RESPONSE TO "SIXTH CAUSE OF ACTION**
11 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT,**
12 **CIVIL CODE § 1750, ET SEQ.**
13 **(AGAINST ALL DEFENDANTS)"**

14 72. With respect to the allegation contained in paragraph 72 of the Complaint, PETCO
15 repeats and realleges each and every admission, denial, averment, and statement in paragraphs 1
16 through 71 of this Answer with the same force and effect as though set forth here in full.

17 73. The allegations contained in paragraph 73 of the Complaint are legal conclusions
18 to which no response is required. If a response is required, PETCO denies each and every
19 allegation contained in paragraph 73 of the Complaint. PETCO lacks knowledge or information
20 sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 73 of
21 the Complaint directed toward the other defendants.

22 74. The allegations contained in paragraph 74 of the Complaint are legal conclusions
23 to which no response is required. If a response is required, PETCO denies each and every
24 allegation contained in paragraph 74 of the Complaint. PETCO lacks knowledge or information
25 sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 74 of
26 the Complaint directed toward the other defendants.

27 75. The allegations contained in paragraph 75 of the Complaint, including
28 subparagraphs (5) and (7), are legal conclusions to which no response is required. If a response is

1 required, PETCO denies each and every allegation contained in paragraph 75 of the Complaint,
 2 including subparagraphs (5) and (7). PETCO lacks knowledge or information sufficient to form a
 3 belief as to the truth or falsity of the allegations contained in paragraph 75 of the Complaint,
 4 including subparagraphs (5) and (7), directed toward the other defendants.

5 76. The allegations contained in paragraph 76 of the Complaint are legal conclusions
 6 to which no response is required. If a response is required, PETCO denies each and every
 7 allegation contained in paragraph 76 of the Complaint. PETCO lacks knowledge or information
 8 sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 76 of
 9 the Complaint directed toward the other defendants.

10 77. PETCO denies each and every allegation contained in paragraph 77 of the
 11 Complaint directed toward PETCO. PETCO lacks knowledge or information sufficient to form a
 12 belief as to the truth or falsity of the allegations contained in paragraph 77 of the Complaint
 13 directed toward the other defendants.

14 78. PETCO denies each and every allegation contained in paragraph 78 of the
 15 Complaint directed toward PETCO except that PETCO admits that Plaintiffs purport to represent
 16 a purported class and purport to seek certain relief. PETCO denies that there is any legal or
 17 factual basis for class certification or the relief sought. PETCO lacks knowledge or information
 18 sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 78 of
 19 the Complaint directed toward the other defendants.

20 **RESPONSE TO "PRAYER FOR RELIEF"**

21 79. The unnumbered paragraph beginning with the word "WHEREFORE" which
 22 follows paragraph 78 of the Complaint, including subparts 1. – 8., are not allegations and,
 23 therefore, no response is required. If a response is required, PETCO denies each and every
 24 allegation set forth in the prayer for relief directed toward PETCO except that PETCO admits that
 25 Plaintiffs purport to represent a purported class and purport to seek certain damages and relief.
 26 PETCO denies that there is any legal or factual basis for class certification or the relief sought.

27 **RESPONSE TO "DEMAND FOR JURY TRIAL"**

28 80. PETCO admits that Plaintiffs purport to demand a trial by jury on all claims.

1 **AFFIRMATIVE AND OTHER DEFENSES**

2 For its affirmative and other defenses, PETCO alleges as follows:

3 **FIRST AFFIRMATIVE DEFENSE**

4 **(Failure to State a Claim)**

5 81. The Complaint and all of the causes of action alleged therein fail to state a claim
6 upon which relief can be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 **(Improper Class Action)**

9 82. Plaintiffs may not maintain this action, as described in the Complaint, as a class
10 action.

11 **THIRD AFFIRMATIVE DEFENSE**

12 **(Statutes of Limitations)**

13 83. Plaintiffs' claims are barred by the applicable statutes of limitations, which may
14 include, but are not limited to, California Code of Civil Procedure sections 337, 338(d), 339(1),
15 340(3) and 343 and any other applicable statute of limitation in any other jurisdiction.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 **(Lack of Standing)**

18 84. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing to
19 bring such claims.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 **(Failure to Join Parties)**

22 85. Plaintiffs' claims are barred, in whole or in part, because the Complaint fails to
23 join necessary and indispensable parties.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 **(Improper Joinder)**

26 86. Plaintiffs' claims are barred, in whole or in part, because they have been
27 improperly joined in this action.

SEVENTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

87. Plaintiffs' claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

EIGHTH AFFIRMATIVE DEFENSE
(Good Faith)

88. Plaintiffs' claims are barred, in whole or in part, by the doctrine of good faith.

NINTH AFFIRMATIVE DEFENSE
(Consent)

89. Plaintiffs' claims are barred, in whole or in part, by the doctrine of consent.

TENTH AFFIRMATIVE DEFENSE
(Res Judicata)

90. Plaintiffs' claims are barred, in whole or in part, by res judicata.

ELEVENTH AFFIRMATIVE DEFENSE
(Payment and Release)

91. Plaintiffs' claims are barred, in whole or in part, because those claims have been released as to PETCO.

TWELFTH AFFIRMATIVE DEFENSE
(Waiver and Estoppel)

92. Plaintiffs' claims are barred, in whole or in part, by the equitable doctrines of waiver and/or estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

93. The relief sought by the Complaint is barred by the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE
(Laches)

94. The relief sought by the Complaint is barred by the doctrine of laches.

FIFTEENTH AFFIRMATIVE DEFENSE
(Spoliation of Evidence)

95. Plaintiffs' claims may be barred, in whole or in part, due to spoliation of evidence.

SIXTEENTH AFFIRMATIVE DEFENSE
(Natural Causes)

96. If Plaintiffs sustained injuries or losses as alleged in the Complaint, such injuries or losses were caused in whole or in part through the operation of nature or other intervening cause or causes.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Assumption of the Risk)

97. If Plaintiffs sustained injuries or losses as alleged in the Complaint, Plaintiffs' injuries and damages were legally and proximately caused by, and arose out of, risks of which Plaintiffs had both knowledge and understanding and that Plaintiffs voluntarily assumed.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

98. If Plaintiffs sustained injuries or losses as alleged in the Complaint, Plaintiffs failed to mitigate their damages, if any, in the manner and to the extent required by law or by equity.

NINETEENTH AFFIRMATIVE DEFENSE
(Fault of Others)

99. If Plaintiffs sustained injuries or losses as alleged in the Complaint, such injuries and losses were caused by persons other than PETCO or by the actions of persons not having real or apparent authority to take said actions on behalf of PETCO and over whom PETCO had no control and for whom PETCO may not be held accountable.

TWENTIETH AFFIRMATIVE DEFENSE
(Comparative Fault)

100. Any liability that might otherwise be imposed upon PETCO is subject to reduction by the application of the doctrine of comparative fault.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Reduction of Damages)

101. To the extent Plaintiffs have received or will in the future received from any person or entity any compensation with respect to the injuries asserted in the Complaint, PETCO's liability, if any, should be reduced accordingly.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(Joint Liability)

102. Plaintiffs' claims, as set forth in the Complaint, are subject to the provisions of California Civil Code section 1431.2 or any other similar provision in any other jurisdiction.

TWENTY-THIRD AFFIRMATIVE DEFENSE
(No Warranty)

103. To the extent that Plaintiffs rely upon any theory of breach of warranty, such claims are barred for lack of timely notice of breach and/or lack of privity and/or because the alleged warranties were disclaimed.

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Constitutional Rights)

104. Plaintiffs' claims are barred, in whole or in part, by the First Amendment of the United States Constitution and similar provisions in the Constitution of the State of California which protect, among other things, PETCO's right to promote and advertise the subject products.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Compliance with the Law)

105. Plaintiffs' Business and Professions Code sections 17200, *et seq.* and 17500, *et seq.* claims are barred, in whole or in part, because all of PETCO's activities as alleged in the Complaint were in compliance with all applicable laws, regulations and rules, and thus cannot be deemed unlawful, unfair, fraudulent, deceptive, untrue or misleading.

TWENTY-SIXTH AFFIRMATIVE DEFENSE
(No Injunctive Relief Available)

106. Plaintiffs' Business and Professions Code sections 17200, *et seq.* and 17500, *et seq.* claims are barred, in whole or in part, because there is no basis for injunctive relief in this action.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Adequate Remedy At Law)

107. Plaintiffs are not entitled to relief under Business and Professions Code sections 17200, *et seq.* and 17500 *et seq.* because Plaintiffs have an adequate remedy at law.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Due Process)

108. Plaintiffs' claims under Business and Professions Code Sections 17200, *et seq.* and 17500 *et seq.* are barred, in whole or in part, under principles of substantive and procedural due process.

TWENTY-NINTH AFFIRMATIVE DEFENSE
(No Punitive Damages)

109. To the extent that Plaintiffs seek punitive damages for the conduct which allegedly caused injuries asserted in the Complaint, punitive damages are barred or reduced by applicable law or statute or, in the alternative, are unconstitutional insofar as they violate the due process protections afforded by the United States Constitution, the excessive fines clause of the Eighth Amendment of the United States Constitution, the Commerce Clause of the United States Constitution, the Full Faith and Credit Clause of the United States Constitution and applicable provisions of the Constitution of the State of California. Any law, statute or other authority purporting to permit the recovery of punitive damages in this case is unconstitutional, facially and as applied, to the extent that, without limitation, it: (1) lacks constitutionally sufficient standards to guide and restrain the jury's discretion in determining whether to award punitive damages and/or the amount, if any; (2) is void for vagueness in that it failed to provide adequate advance notice as to what conduct will result in punitive damages; (3) unconstitutionally may permit

1 recovery of punitive damages based on out-of-state conduct, conduct that complied with
 2 applicable law, or conduct that was not directed, or did not proximately cause harm, to plaintiff;
 3 (4) unconstitutionally may permit recovery of punitive damages in an amount that is not both
 4 reasonable and proportionate to the amount of harm, if any, to Plaintiffs and to the amount of
 5 compensatory damages, if any; (5) unconstitutionally may permit jury consideration of net worth
 6 or other financial information relating to answering defendant; (6) lacks constitutionally sufficient
 7 standards to be applied by the trial court in post-verdict review of any punitive damages award;
 8 (7) lacks constitutionally sufficient standards for appellate review of punitive damages awards;
 9 and (8) otherwise fails to satisfy Supreme Court precedent, including, without limitation, *Pacific*
 10 *Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S.Ct. 1032 (1991); *TXO Production Corp. v.*
 11 *Alliance Resources, Inc.*, 509 U.S. 443, 113 S.Ct. 2711 (1993); *BMW of North America, Inc. v.*
 12 *Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996); and *State Farm Ins. Co. v. Campbell*, 123 S.Ct. 1513
 13 (2003).

14 **THIRTIETH AFFIRMATIVE DEFENSE**
 15 **(No Oppression, Malice or Fraud)**

16 110. To the extent that Plaintiffs seek punitive damages for an alleged act or omission
 17 of PETCO, no act or omission was oppressive, fraudulent, or malicious, under California Civil
 18 Code Section 3294, and therefore, any award of punitive damages is barred. Any claim for
 19 punitive damages is also barred under California Civil Code section 3294(b).

20 **THIRTY-FIRST AFFIRMATIVE DEFENSE**
 21 **(Doe Defendants)**

22 111. PETCO is not legally responsible for the alleged acts and/or omissions of those
 23 defendants named in the Complaint as "Doe" Defendants.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**
 25 **(No Damages or Comparable Injury)**

26 112. Plaintiffs have not sustained any injury or damages compensable at law or have
 27 already been fully compensated for any damages that have been incurred, if any there are.
 28

RESERVATIONS

113. PETCO reserves its right to dismiss the Complaint and seek further relief for Plaintiffs' failure to provide it with due process of law.

114. PETCO reserves the right to amend its answer and assert further affirmative defenses that are not presently known to it but may become known and available through further investigation and discovery.

PETCO'S JURY DEMAND

115. Pursuant to Rule 38, Federal Rules of Civil Procedure, PETCO requests a trial by jury.

WHEREFORE, PETCO prays as follows:

1. That Plaintiffs take nothing by reason of their Complaint and that judgment be rendered in favor of PETCO;

2. That PETCO be awarded its attorneys' fees and the costs of suit incurred in this action; and

3. For such other relief as the Court deems proper.

DATED: May 23, 2007

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: 

Ethan A. Miller

Attorneys for Defendant PETCO ANIMAL
SUPPLIES, INC.

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is One Maritime Plaza, Third Floor, San Francisco, California 94111-3492.

On May 23, 2007, I served the following documents described as: **ANSWER OF PETCO ANIMAL SUPPLIES, INC.** on interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as set forth below:

Gregory D. Helmer
Andrew H. Friedman
HELMER FRIEDMAN LLP
723 Ocean Front Walk
Venice, CA 90291
Telephone: (310) 396-7714
Facsimile: (310) 396-9215

Jean M. Lawler
Gina E. Och
MURCHINSON & CUMMING, LLP
801 South Grand Avenue, 9th Floor
Los Angeles, CA 90017
Telephone: (213) 623-7400
Facsimile: (213) 623-6336


Michael D. Seplow
Michael S. Morrison
SCHONBRUN DESIMONE SELOW
HARRIS & HOFFMAN LLP
723 Ocean Front Walk
Venice, CA 90291
Telephone: (310) 396-0731
Facsimile: (310) 399-7040

Charles Hughes Abbott III
GIBSON DUNN & CRUTCHER, LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-6887

Barbara L. Croutch
PILLSBURY WINTIROP SHAW
PITTMAN, LLP
725 South Figueroa, Suite 2800
Los Angeles, CA 90017
Telephone: (213) 488-7100
Facsimile: (213) 629-1033

☒ **BY FIRST CLASS MAIL** - I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. It is deposited with the United States Postal Service in the ordinary course of business on the same day it is processed for mailing. I caused such envelopes to be deposited in the mail at San Francisco, California. The envelopes were mailed with postage thereon fully prepaid.

Executed on May 23, 2007, at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Agnes A. Gagayan